IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.769 of 1989
with
SPECIAL CIVIL APPLICATION No.9037 of 1992
with
SPECIAL CIVIL APPLICATION No.9038 of 1992
with
SPECIAL CIVIL APPLICATION No.9039 of 1992
with
SPECIAL CIVIL APPLICATION No.9040 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VALIMOHMAD PIRMOHD SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 769 of 1989
MR YN OZA for Petitioner No. 1
MR HD DAVE, AGP for Respondent Nos. 1-2
NOTICE SERVED for Respondent No. 3-6
MR CJ VIN for Respondent No. 7-10

2. Special Civil Application No. 9037 of 1992
MR SH SANJANWALA for Petitioner No. 1

MR YN OZA for Petitioner No. 1
MR HD DAVE, AGP for Respondent No. 1-2
RULE SERVED BY DS for Respondent No. 3-4,6-7
MR NL PATEL for Respondent No. 5

3. Special Civil Application No. 9038 of 1992
MR SH SANJANWALA for Petitioner No. 1
MR YN OZA for Petitioner No. 1
MR HD DAVE, AGP for Respondent No. 1-2
RULE SERVED BY DS for Respondent No. 3-4,6-7
MR NL PATEL for Respondent No. 5

4. Special Civil Application No. 9039 of 1992
MR SH SANJANWALA for Petitioner No. 1
MR YN OZA for Petitioner No. 1
MR HD DAVE, AGP for Respondent No. 1-2
RULE SERVED BY DS for Respondent No. 3-4,6-7
MR NL PATEL for Respondent No. 5-5/4

5. Special Civil Application No. 9040 of 1992
MR SH SANJANWALA for Petitioner No. 1
MR YN OZA for Petitioner No. 1
MR HD DAVE, AGP for Respondent No. 1-2
RULE SERVED BY DS for Respondent No. 3-4,6-7
MR NL PATEL for Respondent No. 5

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 24/07/2003

COMMON ORAL JUDGEMENT

1. This petition has been preferred challenging the action of the respondent - State authorities in directing cancellation of Entry Nos.971, 972, 973 and 974 dated 14-05-1982.

1.1. In Special Civil Application Nos.9037/1992, 9038/1992, 9039/1992 and 9040/1992 the petitioner has challenged the action of the revenue authority of cancelling the auction sale.

2. It is common ground between the parties that the parties are the same in all the five petitions and the facts stated in Special Civil Application No.769 of 1989 shall govern the other petitions also. Hence, all the petitions are taken for hearing and disposal together.

3. The petitioner is the Chief Organizer / Promoter

of one Paramount Industrial Co-operative Society Limited. The case of the petitioner is that the petitioner purchased the lands bearing Survey Nos.113-Part, 106, 111, 105/1 situated at Moje Bhestan, Taluka Choryasi, District Surat. It is stated that the lands were purchased in auction held on 29-05-1981 and on the basis of the certificate issued by the Special Recovery Officer (Auction Officer) entries came to be made on 14-05-1982. Entry No.971 relates to Survey No.113-Part; Entry No.972 relates to Survey No.113-Part; Entry No.973 relates to Survey No.106 and 111; and Entry No.974 relates to Survey No.105/1. It is further averred by the petitioner that in pursuance of the auction sale the petitioner - Society has been handed over possession of the lands by the Auction Officer on 14-05-1982.

4. Respondent Nos.7, 8, 9 and 10 are the respective land owners of different parcels of land bearing aforesaid survey numbers.

5. The Assistant Collector, Choryasi issued notice for reversing the aforesaid entries viz. Entry Nos.971, 972, 973 and 974 and after hearing the Special Recovery officer as well as Secretary of Shree Abheta Vibhag Seva Shahakari Mandali Limited passed an order on 06-01-1986 holding that the auction proceedings are carried out in suspicious circumstances and as the lands fall within urban area governed by the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as 'the Ceiling Act') could not have been transferred without prior permission of the competent authority under the Ceiling Act. In the circumstances, the order of cancelling entries made on 14-05-1982 came to be made by the Assistant Collector on 06-01-1986. It is pertinent to note that the notice for showing cause and/or hearing which was sent to the petitioner had not been served on the petitioner and this fact is recorded by the Assistant Collector in his order. The Assistant Collector passed four identical orders dated 06-01-1986 each relatable to a different entry.

6. The petitioner being aggrieved filed four appeals before the Collector, Surat. The said appeals came to be registered as R.T.S. Appeal Nos.382/1987, 383/1987, 384/1987 and 385/1987. The collector, Surat vide his order dated 05-08-1988 confirmed the orders of the Assistant Collector and while confirming also observed that the auction proceedings were suspicious and that provisions of Section 42 of the Ceiling Act had not been taken into consideration while carrying out the auction sale, passing the mutation entry and transferring the

lands in favour of the petitioner.

7. The consolidated order of the Collector, Surat was challenged before the Secretary, Revenue Department, Government of Gujarat in revision. The revisional authority, for the reasons stated in his order dated NIL, confirmed the orders of the Assistant Collector and the Collector and rejected the Revision Application. The said order of the revisional authority has been dispatched on 23-01-1989 and has been received by the petitioner on 28-01-1989.

8. Mr.Y.N.Oza, learned senior counsel appearing on behalf of the petitioner, submitted that the petition was required to be allowed because firstly, the authorities could not have initiated suo motu revisional action after a period of nearly four years; secondly, the Ceiling Act was an independent statute and, even if there was any violation, the same could not form basis of initiating action under Section 211 of the Bombay Land Revenue Code, 1979 (hereinafter referred to as 'the Code'); thirdly, the Collector had no power to revise the order of Special Recovery Officer; fourthly, that though it was averred in the affidavit-in-reply that a fraud was committed, the debtors and creditors were not heard in relation to the said aspect; and fifthly, respondent Nos.7, 8, 9 and 10, who were the land owners, who were parties to the auction proceedings, could not be heard to make a grievance as they had not moved an application under Section 178 read with Section 179 of the Code. It was also submitted that by virtue of the impugned orders the revenue authorities had merely directed cancelling all the entries and the auction sale itself had not been challenged. However, the authorities had realized their mistake and had subsequently initiated another revisional action whereby the order dated 29-05-1981 of the Special Recovery officer was quashed and set aside, against which the petitioner had preferred connected petitions bearing Special Civil Application Nos.9037/1992, 9038/1992, 9039/1992 and 9040/1992. In this connection, it was also pointed out that the Collector had initiated suo motu revisional action and cancelled the sale by order dated 29-11-1988 and the said order had been confirmed by the Special Secretary (Appeals), Revenue Department on 24-01-1992. The submission was that, in the circumstances, the subsequent cancellation of sale and confirmation thereof by the appellate authority was tainted with mala fide.

9. Mr.H.D.Dave, learned A.G.P., submitted that the contention of the petitioner as regard delay in

initiating action should not be accepted because the entire exercise carried out by the Special Recovery officer was in collusion with the petitioner and the land owners so as to circumvent the provisions of the Ceiling Act. It was submitted that Section 211 of the Code read with Rule 108 (6) of the Land Revenue Rules empowered the State Government and certain other Revenue Officers to call for and examine record and proceedings of subordinate officers and to pass necessary orders in this regard; that no limitation was prescribed for exercising such revisional powers and hence the orders of the authority whereby directions were issued to cancel the relevant entries in revenue records as well as cancel the auction sale were correctly made because the entries had been made by officers subordinate to the Assistant Collector and the auction proceedings carried out by the Special Recovery Officer were also by a subordinate officer because the Special Recovery Officer was of the rank of Mamlatdar. Thus, according to Mr.Dave, the petitioner cannot have any grievance because the authority had been empowered by the provisions of the Act and it was in discharge of duty cast upon the officer that the proceedings for revision had been taken. It was submitted that in almost similar circumstances in cases of land situated in Surat District this Court in the case of Uma Small Scale Industrial Co-op. Society Ltd. Vs Collector, Surat & Ors., 2002 (1) G.L.R. 226 had upheld the revisional action by holding that the auction is only with a view to frustrate provisions of Urban Land Ceiling Act. It was also submitted on strength of the aforesaid decision of this Court that where the order passed by the subordinate authority is non-est at law, bar of limitation cannot be invoked and the revisional authority is entitled to exercise powers without any fetters.

10. Mr.N.L.Patel, learned advocate appearing on behalf of the respondent Nos.7 to 10, the original land owners, submitted that the orders of the revisional authority were required to be upheld for the simple reason that when the auction proceedings had taken place and the petitioner purchased the lands, the Society had not been registered and it was the promoter who had participated in the bid. That it was settled law that in such circumstances an agreement in the form of contract with a non-existing person was a nullity and no relief on the basis of such an agreement could be sought or enforced. In support of the proposition reliance was placed on the decision of this Court in the case of Ashokkumar J. Pandya Vs. Suyog Co-operative Housing Society Ltd. & Ors., 2002 (3) G.L.R. 2521. It was also submitted that the Chief Promoter of the petitioner

Society was a non-agriculturist and even on that count the land in question could not have been purchased. That on 09-04-1981 a Banakhat (Agreement for Sale) had been entered into between the petitioner and the respondent Nos.7, 8, 9 and 10 while the auction sale had taken place on 29-05-1981. That the petitioner had also initiated a Civil Suit for specific performance on the basis of such Agreement for Sale in the Civil Court, Surat, and hence, in the circumstances, there being disputed questions of fact as to title, possession, etc. the petition should be rejected.

11. Mr.Y.N.Oza, in rejoinder submitted that though the respondent - State has averred collusion between the petitioner and respondent Nos.7, 8, 9 and 10 so as to circumvent provisions of the Ceiling Act, no evidence has been placed on record. It was submitted that fraud being a question of fact it was necessary to place necessary evidence on record and the authorities had failed to do so except mentioning that there were suspicious circumstances surrounding the auction proceedings. That the original landowners, i.e. Respondent Nos.7 to 10 were supporting revisional action today, while before the authorities they were supporting the petitioner.

12. For ascertaining whether the auction proceedings and the consequential sale were fraudulent transaction or not, the Court called upon the parties to explain in what circumstances the Special Recovery Officer came to be appointed and entrusted with the task of carrying out the auction. As can be seen from the record of Special Civil Application Nos.9037/1992 to 9040/1992, the Special Recovery Officer in each of his order dated 29-05-1981 has stated that the said proceedings have been taken in pursuance of certificate issued under Section 106 of the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as 'the Societies Act'). It is an accepted position between the parties that one Shri Ranchhodbhai Narottambhai, Shri Naranbhai Durlabhbhai, Shri Balubhai Kalidas and Shri Pushpaben Ambalal Desai had taken loans from Shri Abheta Vibhag Seva Shahakari Mandali. That respondent Nos.7 to 10 are the gurantors against whose gurantee (on the basis of being land holders) the loans had been advanced. As the said persons i.e. the debtors could not return the loans, by virtue of powers available under Section 106 of the Societies Act, the Registrar granted a certificate for recovery of the amount duly stated in the certificate to be due as arrears. Once this is the position, the revenue authorities could not have shut their eyes to the certificate issued under Section 106 of the Societies Act by the Registrar and

proceeded on the footing that the auction sale and the consequential entries were required to be cancelled as being fraudulent transactions.

13. It is pertinent to note that at no stage, either before the revenue authorities viz. in any of the orders of the revenue authorities, or even during course of hearing of these petitions, it has even been suggested, much less established that the Registrar under the provisions of Section 106 of the Societies act had not issued a certificate for recovery of arrears, or that such a certificate had been obtained by fraud. Sub-section (3) of Section 106 of the Societies Act states that a certificate granted by the Registrar under sub-section (1) or sub-section (2) shall be final, and a conclusive proof of the arrears stated to be due therein, which shall be recoverable according to the provisions of the Code and of the Rules thereunder for the time being in force for the recovery of Land Revenue. Thus, on a plain reading of Section 106(3) of the Societies Act it is abundantly clear that finality of the certificate and the conclusiveness of the arrears stated in the certificate stand established and recourse to provisions of the Land Revenue Code and Rules thereunder is only for the limited purpose of effecting recovery of the outstanding dues.

14. The position in law, therefore, would be that the certificate granted by the Registrar under Section 106 of the Co-operative Societies Act would be akin to a judgement and order of a Civil Court which would exist and would be effective unless and until set aside or reversed or modified by a competent higher forum. Till this is not done execution proceedings in consequences of such a judgement and decree cannot be stated to be bad in law, as is sought to be made out by the revenue authorities in the present case. Assuming for the sake of argument that during course of effecting recovery under the provisions of the Land Revenue Code and the Rules thereunder, some irregularity is committed, at the highest, the superior authority can direct the subordinate authority and/or the parties to rectify such an irregularity, but in no circumstances can the superior authority exercise revisional powers to cancel the recovery proceedings. If this be the legal position it is not possible to accept the stand of the State Government that revenue authorities were justified in exercising revisional jurisdiction under Section 211 of the Land Revenue Code. It was necessary for the revenue authorities to bear in mind that unless and until the certificate issued by the Registrar under Section 106 of

the Societies Act was set aside by a higher competent forum, it was not open to the revenue authorities to undertake revisional exercise only in relation to the recovery proceedings, as the auction proceeding was only for the purpose of recovery of the outstanding dues duly certified by the Registrar as provided under Section 106 of the Societies Act, and the mutation of entry was only a natural corollary or a logical consequence.

15. As regards the contention on behalf of the State Government regarding there being no limitation prescribed under Section 211 of the Land Revenue Code, the position in law is well settled that in absence of any limitation having been prescribed, the revisional authority is required to exercise the power within a reasonable period. State of Gujarat Vs. Patel Raghav Natha, 1969 G.L.R. SCC 992. This position has thereafter been reiterated by the Apex Court in number of cases and followed and applied by this Court also.

16. To this general proposition of law the Apex Court itself has carved out an exception, viz. in what circumstance limitation would not operate as a bar while exercising revisional powers. In case of State of Orissa and others Vs. Brundaban Sharma and Another, 1995 Supp.(3) SCC 249, it is stated thus in para 16 of the judgment :

"16. It is therefore, settled law that when the revisional power was conferred to effectuate a purpose, it is to be exercised in a reasonable manner which inheres the concept of its exercise within a reasonable time. Absence of limitation is an assurance to exercise the power with caution or circumspection to effectuate the purpose of the Act, or to prevent miscarriage of justice or violation of the provisions of the Act or misuse or abuse of the power by the lower authorities or fraud or suppression. Length of time depends on the factual scenario in a given case. Take a case that patta was obtained fraudulently in collusion with the officers and it comes to the notice of the authorities after a long lapse of time. Does it lie in the mouth of the party to the fraud to plead limitation to get away with the order ? Does lapse of time an excuse to refrain from exercising the revisional power to unravel fraud and to set it right ? The answers would be no."

The Supreme Court thereafter goes on to observe in context of the facts before it that "a non est order

is a void order and it confers no title and its validity can be questioned or invalidity be set up in any proceeding or at any stage". However, the Apex Court has also before making the aforesaid observation stated in earlier paras to the effect that : "Power under Section 211 of the Code must be exercised within reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised." xxx xxx xxx "What would be a reasonable time so as to be immune from the attack that the power has been exercised in any reasonable manner would depend upon the facts and circumstances of the case".

17. In the circumstances, the decision of this Court in the case of Uma Small Scale Industrial Co-op. Society Ltd. Vs. Collector, Surat & Ors. (supra) cannot carry the case of the State any further in light of the fact that in the said decision the Court has categorically found that on facts mala fides of the petitioner were established and hence, writ jurisdiction could not be invoked to perpetuate an illegality.

18. As already stated hereinabove, in the present case, though the revenue authorities have stated at number of places that there are suspicious circumstances, how and in what manner the transaction is fraudulent or what is the suppression of fact is neither brought on record nor do the orders reflect any such fraud. The position in law is settled that conjectures and surmises cannot take place of evidence and cannot form basis of an order in absence of cogent and necessary evidence pointing unequivocally in direction of fraud. At the cost of repetition it requires to be stated that it is not even the case of the revenue authority that the certificate issued under Section 106 of the Societies Act by the Registrar was either obtained by fraud or was false.

19. The authority is required to take into consideration that it is primarily required to record findings of fact after appreciating the evidence on record, and for this purpose it shall have to consider whether there is evidence, or whether it is a case of lack of evidence or a case of insufficient evidence. The rule of 'no evidence' as summarised by this Court in the case of Siddharth Mohanlal Sharma v. South Gujarat University, 1982 (1) Guj LR 233, has been succinctly stated in the following terms.

" The English Courts have not construed the words 'no evidence' narrowly. The rule of 'no

> evidence' is there attracted not only in cases where there is complete lack of evidence, that is to say, where there is not a title or shred of evidence, but also in cases where the evidence, if any, is not capable of having any probative value, or on the basis of which no Tribunal could reasonably and logically come to the conclusion about the existence or non-existence of facts relevant to the determination. Accordingly to the English decisions, even though a domestic tribunal may act on evidence not admissible according to legal rules in a Court of law, unless such evidence has some probative value in the sense mentioned above, it would be a breach of natural justice and/or an error of law to found any adverse decision thereon.
>
> The 'no evidence', rule has the same content and meaning in our country as in England. 'No evidence' does not merely signify total dearth of evidence, evidence which does not reasonably support the conclusion is also comprehended within the meaning of the said expression. In other words, cases where there is complete lack of evidence and cases where the evidence, if any, is incapable of rationally leading to the conclusion reached, are both treated on a par so far the applicability of the rule of 'no evidence' concerned. Mere suspicion, even if honestly and bona fide entertained on the basis of apparently cogent circumstances, is held to be out of bounds even in domestic inquiries, where the principle that in punishing the guilty scrupulous care must be taken to see that the innocents are not punished is found to apply as much as it applies to regular criminal trials. In the ultimate analysis, the test which must be applied is whether there is same material capable on having any evidential value. If not, the case must be held to fall within the mischief of the rule of 'no evidence'. "

20. Therefore, this is not a case of insufficient evidence or lack of evidence but a case of 'no evidence'. The evidence on which reliance has been placed by the authority would not reasonably lead to the conclusion that the authority has arrived at. Suspicion, howsoever strong and even if based on circumstances, cannot take place of evidence and for the purpose of establishing fraud there has to be evidence. Fraud cannot be accepted to have been established on the basis of mere suspicion,

even if honestly and bona fide entertained on the basis of circumstances.

21. In the circumstances, the revenue authorities having failed to initiate revisional action, assuming such jurisdiction was available, within reasonable period the impugned orders fail also on the ground of limitation. As to what is reasonable period of limitation has been specified to be normally about one year from the date of the order sought to be revised. In the present case, the exercise of jurisdiction after expiry of about four years must be held not to have been exercised within a reasonable period within the ambit of Section 211 read with Rule 108(6) of the Land Revenue Code and Rules thereunder.

22. Mr.Oza on behalf of the petitioner also places reliance on the decision of this Court rendered on 17-08-1990 in Special Civil Application No.5516 of 1990 wherein it is held that while deciding the case under Section 211 of the Bombay Land Revenue Code, the Collector cannot enter into realm of the provision of the Ceiling Act, because the Ceiling Act provides for its own independent machinery to adjudicate disputes under the said Act. It is stated that "it is quite possible that an officer may be occupying different capacities under different enactments, but that would not justify the officer proceeding under a particular enactment to exercise his powers under an altogether different enactment". Therefore, on this count also the action of the revenue authorities cannot be upheld.

23. There is one more aspect of the matter which requires consideration. The order dated 29-05-1981 made by the Special Recovery officer specifically records that out of the auction proceeds received from the highest bidder, amount which was outstanding as dues of Shree Abheta Vibhag Seva Shahakari Mandali Limited has been paid over to the said Mandali and the remaining amount i.e. the balance of the auction proceeds has been handed over to the land owners. In this context, provisions of Section 178 and 179 of the Land Revenue Code will have to be appreciated. Section 178 envisages situations in which an application could be made to the Collector to set aside the sale on the ground of some material irregularity, or mistake, or fraud, in publishing or conducting the auction sale. In the present case, the land owners have admittedly not moved any application under Section 178 of the Land Revenue Code. Therefore, as the matter stands, it cannot be stated that there is any material irregularity, or mistake, or fraud in either

publishing or conducting the auction. Therefore, the basis of the impugned orders disappears. As already stated hereinbefore, the authorities have failed to establish any fraud and as far as material irregularity or mistake is concerned, even that has not been shown to be existing.

24. Section 179 of the Land Revenue Code deals with the power of the Collector to confirm or set aside a sale in pursuance of an application. If no application as required under Section 178 of the Act is made, within a period of expiration of 30 days from the date of sale, the Collector is required to make an order confirming the sale. However, a proviso has been carved out whereunder the Collector has suo motu power which can be exercised, if he has reason to think that the sale requires to be set aside and such reasons have to be recorded in writing. The powers under Section 179 are wide enough to set aside the sale either on the grounds which may be available as stated in Section 178 of the Land Revenue Code or other than those which could be available for making an application under Section 178. In the present case, admittedly, there are no other grounds stated by the Collector for seeking to set aside the sale. The authorities have narrated various circumstances which, they themselves state in their respective orders, are suspicious circumstances. However, such suspicious circumstances cannot form the basis for exercising revisional jurisdiction in absence of any supporting cogent evidence. Thus, on this count also the petitioner should succeed.

25. In the orders of the Collector cancelling the sale date 29-05-2981, the Collector has referred to declaration dated 29-10-1988 declaring certain lands of the land owners as surplus/excess lands. As can be seen the said order is made seven years after the aforesaid auction sale was made. In the circumstances, it is not possible to accept the stand of the revenue authorities that auction sale which took place in 1981 was effected for the purpose of frustrating provisions of the Ceiling Act in absence of any contemporaneous evidence.

26. Therefore, to summarize : (1) the action of the revenue authorities in initiating revisional jurisdiction is bad in law because of limitation; (2) the action of revenue authorities is also bad in law because the basis on which auction proceedings and consequential entries have been made has not been disturbed i.e. the certificate issued under Section 106 of the Societies Act by the Registrar; (3) though suggested, the revenue authorities have not been able to establish fraud; (4)

respondent Nos.7, 8, 9 and 10 being parties to auction proceedings and having not applied under Section 178 of the Land Revenue Code cannot make grievance and support the action of the revenue authorities; and (5) order of setting aside sale under Section 179 of the Land Revenue Code has to be made after recording of reasons and in the present case the order is based on surmises and conjectures and is not supported by reasons as required in law.

27. In the circumstances, all the petitions are allowed. Rule made absolute. In Special Civil Application No.769 of 1989 the orders of the Assistant Collector dated 06-01-1986, the Collector dated 05-08-1988 and revisional authority dated 23-01-1989 are quashed and set aside.

In Special Civil Application Nos.9037/1992 to 9040/1992 the orders of the Collector dated 29-11-1988 and Special Secretary (Appeals), Revenue Department, dated 24-01-1992 are quashed and set aside. There shall be no order as to costs.

Office is directed to place copy of this order in all connected matters.

Sd/-

[D.A.MEHTA, J]

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'Bhavesh'